

SERVICE DATE – SEPTEMBER 22, 2005

SURFACE TRANSPORTATION BORAD

DECISION

STB Docket No. AB-857X

GREAT WESTERN RAILWAY OF COLORADO, LLC.—ABANDONMENT
EXEMPTION—IN WELD COUNTY, CO

Decided: September 21, 2005

Great Western Railway of Colorado, LLC (GWRC) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its Eaton Subdivision located between milepost 30.8 near Windsor, and milepost 42.5 near Eaton, a distance of approximately 11.7 miles, in Weld County, CO. Notice of the exemption was served and published in the Federal Register on November 10, 2003 (68 FR 63846-47).¹ The exemption was scheduled to become effective on December 10, 2003. On November 14, 2003, however, a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by the Windsor, Severance & Eaton Railroad, LLC (WS&E) to purchase all or a portion of the Eaton Subdivision. The filing of that notice of intent had the effect of automatically staying the effective date of the exemption for 10 days, until December 20, 2003.

On March 24, 2004, WS&E filed a request for permission to withdraw its notice of intent to file an OFA. By a decision and notice of interim trail use or abandonment (NITU) served on April 7, 2004: (1) the proceeding was reopened; (2) WS&E's withdrawal request was granted and the OFA process was terminated; (3) the exemption became effective on the decision's service date, subject to conditions; and (4) a 180-day period was authorized for the Municipalities of Eaton, Severance, and Windsor, CO, to negotiate an interim trail use/rail banking agreement with GWRC for the right-of-way. The negotiating period under the NITU was extended by decisions served on October 27, 2004, and April 14, 2005, with the latest extension scheduled to expire on September 29, 2005.

On September 13, 2005, GWRC filed a request to extend the NITU negotiating period for an additional 180 days. GWRC states that it has not consummated the abandonment of the line and the parties are continuing to negotiate an agreement.

Where, as here, the carrier is willing to continue trail use negotiations, the negotiating period may be extended. Under the circumstances, an extension of the negotiating period is

¹ By decision served November 24, 2003, the proceeding was reopened and the exemption was made subject to two environmental conditions – a historic preservation condition and a National Geodetic Survey (NGS) notification condition. By decision served May 26, 2004, the historic preservation condition was removed. The NGS condition remains in effect.

warranted and will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d).² Accordingly, the NITU negotiating period will be extended for an additional 180 days from September 29, 2005, until March 28, 2006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. GWRC's request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended to March 28, 2006.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

² See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).